

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>BOBBY BURGHART,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CIV-08-62-C</b>
	)	
<b>CORRECTIONS CORPORATION OF</b>	)	
<b>AMERICA, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**REPORT AND RECOMMENDATION**

Plaintiff, a prisoner appearing pro se, has filed a complaint alleging violations of his constitutional rights under 42 U.S.C. § 1983. Currently before the Court is “Plaintiff’s Motion to Proceed *In Forma Pauperis*.” For the reasons set out in this report, the undersigned finds that Plaintiff is not entitled to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(g). Plaintiff advises the Court on page 14, ¶ 77 of his complaint that “Plaintiff has three (3) strikes under the PLRA . . . .” Pursuant to the provisions of 28 U.S.C. § 1915(g), Plaintiff may not bring this action *in forma pauperis* unless he can demonstrate that he is under “imminent danger of serious physical injury.” Plaintiff has made no such showing. It is therefore recommended that Plaintiff’s motion be denied and that Plaintiff be required to pay the full \$350 filing fee before being allowed to proceed with this action.

**Analysis**

Title 28 U.S.C. § 1915(g), the so-called three strikes provision of the *in forma pauperis* statute, as amended by the Prison Litigation reform Act of 1995, Pub.L.No. 104-134, 110 Stat. 1321 (April 26, 1996), provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

This provision does not bar a prisoner with three strikes from filing civil actions, but it does ordinarily eliminate the privilege to proceed *in forma pauperis*. A prisoner who has three strikes may nevertheless proceed in civil actions or appeals by prepaying the filing fee. *See Jennings v. Natrona County Detention Center Medical Facility*, 175 F.3d. 775, 778 (10<sup>th</sup> Cir. 1999); *see also Medberry v. Butler*, 185 F.3d. 1189, 1193 n. 2 (11<sup>th</sup> Cir 1999) (“We note that 28 U.S.C. § 1915(g) does not deny prisoners the right of access to the courts; it merely requires them to pay the filing fee immediately and in full rather than on an installment plan.”).

In support of his claim that he should be allowed to proceed *in forma pauperis*, Plaintiff asserts that he paid the full filing fee on his prior actions and argues that since this is his first time to proceed *in forma pauperis* in federal court, he should be allowed to proceed without payment of the full filing fee notwithstanding the three strikes. He offers no authority for this position, and the language of the statute does not support Plaintiff’s argument. The undersigned finds no merit in Plaintiff’s argument.

#### **RECOMMENDATION**

Accordingly, it is recommended that Plaintiff’s motion to proceed *in forma pauperis* be DENIED and this action dismissed without prejudice unless Plaintiff either pays the full \$350 filing fee or satisfies the requirements for proceeding *in forma pauperis*

under 28 U.S.C. § 1915(g) by showing that he is “under imminent danger of serious physical injury” on or before the 20th day of February, 2008. Plaintiff is advised that any objection to this Report and Recommendation must be filed with the Clerk of this Court by the 20th day of February, 2008, in accordance with 28 U.S.C. § 636 and Local Rule 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656 (10<sup>th</sup> Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

**ENTERED** this 31st day of January, 2008.

  
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BANA ROBERTS  
UNITED STATES MAGISTRATE JUDGE